

**ARCHER & GREINER**  
**A Professional Corporation**  
**One Centennial Square**  
**Haddonfield, NJ 08033-0968**  
**(856) 795-2121**  
**Attorneys for Plaintiff**  
**Franklin Electronic Publishers, Inc.**

**BY: ROBERT EGAN, ESQUIRE**  
**KERRI E. CHEWNING, ESQUIRE**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**

FRANKLIN ELECTRONIC PUBLISHERS, INC.,  Plaintiff,  v.  FRANKLIN COVEY COMPANY AND FC ORGANIZATIONAL PRODUCTS LLC,  Defendants.	Civil Action No. _____  Electronically Filed
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**COMPLAINT AND DEMAND FOR JURY TRIAL**

Franklin Electronic Publishers, Inc. ("Plaintiff" or "Franklin"), by way of Complaint against Defendants, Franklin Covey Company ("FCC") and FC Organizational Products, LLC ("FCOP"), alleges as follows:

**THE PARTIES**

1. Franklin is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 8 Terri Lane, Burlington, New Jersey 08016.

2. FCC is a corporation organized and existing under the laws of the State of Utah, with its principal place of business at 2200 W. Parkway Boulevard, Salt Lake City, Utah 84119.

3. FCOP is a limited liability company organized and existing under the laws of the State of Utah, with its principal place of business at 2200 W. Parkway Boulevard, Salt Lake City, Utah 84119.

### **JURISDICTION AND VENUE**

4. This Court has federal subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1338(a) in that Plaintiff's claims for trademark infringement, false designation of origin, and false description arise under the Lanham Act.

5. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1338(b) and 28 U.S.C. §1367(a) over Plaintiff's claims for violation of New Jersey's Fair Trade Practices Act, common law trademark infringement, and common law unfair competition.

6. This Court has personal jurisdiction over Defendants because Defendants transact business within New Jersey, derive substantial revenue from intrastate and interstate commerce, and have engaged in conduct that has significantly and adversely affected the interests of Franklin, a corporation with its principal place of business in New Jersey. Defendants knowingly engaged, directly or indirectly, in the acts and conduct set forth herein, including advertising and selling products under the infringing marks at issue in this action, with the reasonable expectation that such products would be advertised and sold in the State of New Jersey.

7. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(a) and (c) because Defendants are subject to personal jurisdiction in this District.

### **FACTUAL ALLEGATIONS**

#### **Plaintiff's Business and its Trademark, "FRANKLIN"**

8. Franklin invents, designs, and sells handheld consumer electronics products ("Franklin Products"), such as spelling correctors, dictionaries, translation devices, booklights, and Bibles.

9. On April 13, 1987, Franklin applied to register the mark, "FRANKLIN," with the United States Patent and Trademark Office. On March 1, 1988, the USPTO approved the application and issued a Certificate of Registration under Registration Number 1,478,400. A true and correct copy of the Registration Certificate is attached as Exhibit A.

10. Since 1988, Franklin has continuously used the mark FRANKLIN in commerce to identify its goods and services.

11. On July 30, 1990, Franklin registered the domain name "franklin.com" with Network Solutions, LLC, for the purpose of marketing and selling Franklin Products to online consumers.

12. Since on or about July 30, 1990, Franklin has continuously owned and maintained the website "www.franklin.com" through which Franklin Products are displayed for retail sale.

13. The mark FRANKLIN has been federally registered for more than five years and is now incontestable pursuant to 15 U.S.C. § 1065.

**Defendants' Business and Competition with Franklin**

14. FCC was incorporated on May 30, 1997. FCC sells time-management training and assessment services ("FCC Services"), in addition to various consumer products, including planners, organizers, calendars, e-readers, and electronic tablets ("FCC Products").

15. FCC owns the domain name, "franklincovey.com," through and under which it currently markets and sells FCC Services. Prior to 2008, FCC sold FCC Products and FCC Services on the website "www.franklincovey.com."

16. In 2006, Franklin and FCC sold competing electronic organizer products on their respective websites.

17. In or about 2008, FCOP became the official licensee of FCC Products. FCOP currently operates retail stores at eleven locations throughout the United States.

18. FCOP owns the domain name, "franklinplanner.com," through and under which it currently markets and sells FCC Products.

19. Currently, Franklin and FCOP sell competing booklights on their websites.

**Defendants' Wrongful Activities**

20. AdWords is Google's main advertising program. The program allows advertisers to drive traffic to their websites through keyword bidding. Advertisers purchase their desired keywords through an AdWords auction where advertisers bid against one another for page position on the search results page. Ads are ranked according to their maximum bid, thus an advertiser will try to outbid its competitors for the top positions in order to maximize the number of clicks on the advertiser's text ad because more clicks yield increased web traffic, which means

more potential website sales. When an online user clicks on an advertiser's sponsored ad, the advertiser pays Google a fee, known as a "pay-per-click fee."

21. When a person uses Google to search for keywords that an advertiser has successfully bid on through AdWords, the advertiser's ad appears above and/or next to the search results. If the person subsequently clicks on the ad, he or she is automatically redirected to the advertiser's website. Advertisers select the keywords that trigger their ads and the text that is displayed in those ads.

22. In June, 2006, FCC began bidding on "franklin.com" as a keyword through Google's AdWords program.

23. In 2008, FCOP began bidding on "franklin.com" as a keyword through Google's AdWords program.

24. Upon information and belief, FCC and/or FCOP have also bid on "franklin" as a keyword through Google's AdWords program.

25. Because Defendants bid on "franklin.com" and "franklin" as keywords through Google's AdWords program, Defendants' ads have appeared, and currently appear, at the top of the search results when a person searches for "franklin.com" and/or "franklin" using Google. True and correct copies of computer screenshots containing Defendants' ads that display on Google when the search terms "franklin.com" and "franklin" are used are attached as Exhibit B.

26. In addition, Defendants' ads under Google's AdWords program have incorporated Franklin's domain name and false and misleading statements of fact, including the following:

- (a) “franklin.com: The Official Franklin Covey site”
- (b) “Franklin.com | FranklinCovey- Official site for Franklin Covey® products.”

A true and correct copy of a computer screenshot containing Defendants’ ad that displayed when the “franklin.com” search term was entered is attached as Exhibit C.

27. “franklin.com” is not and has never been “The Official Franklin Covey site.”

28. “Franklin.com” is not and has never been the “Official site for Franklin Covey® products.”

29. At times, when an online user clicked on one of Defendants’ ads which displayed Franklin’s domain name “franklin.com” or “Franklin.com,” he or she was automatically redirected to one of Defendants’ websites, “www.franklincovey.com” or “www.franklinplanner.com.”

30. Defendants are responsible for bidding on the keywords, “franklin.com” and “franklin” under Google’s AdWords program.

31. Defendants are responsible for the textual content of the ads described herein.

32. Defendants’ keyword advertising under Google’s AdWords program diverts Internet consumers searching for “franklin.com” and/or “franklin” from Franklin’s website and redirects them to Defendants’ websites, “www.franklincovey.com” and/or “www.franklinplanner.com.”

33. Defendants knowingly and intentionally selected keyword advertising under Google’s AdWords program to divert Internet consumers searching for “franklin.com” and/or

“franklin” from Franklin’s website and to redirect them to Defendants’ websites,  
“www.franklincovey.com” and/or “www.franklinplanner.com.”

34. Franklin became aware of Defendants’ keyword advertising under Google’s AdWords program in or about June 2012. On behalf of Franklin, counsel sent a cease and desist letter to Defendants regarding their misleading advertisements and unauthorized use of Franklin’s trademark. A true and correct copy of the cease and desist letter is attached as Exhibit D.

35. Robert Wilkinson, counsel for FCOP, responded by email on June 28, 2012, stating that “FCOP has stopped bidding on the term.” A true and correct copy of Robert Wilkinson’s email is attached as Exhibit E.

36. Since Mr. Wilkinson’s June 28, 2012 email, Defendants’ ads have continued to appear at the top of search results on Google when an online user searches for “franklin.com” and/or “franklin,” and have at times displayed Franklin’s domain address, “franklin.com.”

37. Defendants’ use of the mark FRANKLIN and/or “franklin.com” in keyword advertising as described above is likely to cause confusion and mistake among consumers that Defendants’ goods and services originate with Franklin.

38. Defendants’ use of the mark FRANKLIN and/or “franklin.com” in keyword advertising as described above is likely to cause confusion and mistake among consumers that there is a connection, affiliation, or association between Defendants and Franklin.

39. Defendants’ use of the mark FRANKLIN and/or “franklin.com” in keyword advertising as described herein is likely to cause confusion and mistake among consumers that

Defendants' goods and services are being offered to the public with the sponsorship or approval of Franklin.

40. The aforementioned acts of Defendants are willful and intentional.

41. Defendants knew that their use of the mark FRANKLIN and/or "franklin.com" in keyword advertising was identical and/or confusingly similar to the mark FRANKLIN.

42. Defendants have used the mark FRANKLIN in a deliberate effort to cause confusion and mistake among the public as to the source, affiliation, and/or sponsorship of Defendants' websites, and to gain the benefit of the goodwill associated with the mark FRANKLIN.

### **COUNT ONE**

#### **False Association/Violation of §43(a) of the Lanham Act**

43. Franklin repeats and incorporates the allegations of the foregoing paragraphs of this Complaint.

44. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A), provides, in relevant part, as follows:

- (a) Any person who, on or in connection with any goods or services, or any container for the goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which –

is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damages by such act.



45. Defendants' use of the mark FRANKLIN and/or "franklin.com" in keyword advertising as described above is likely to cause confusion and mistake among consumers that Defendants' products originated with Franklin.

46. Defendants' use of the mark FRANKLIN and/or "franklin.com" in keyword advertising as described above is likely to cause confusion and mistake among consumers that there is a connection, affiliation, or association between Defendants and Franklin.

47. Defendants' use of the mark FRANKLIN and/or "franklin.com" in keyword advertising as described above is likely to cause confusion and mistake among consumers that Defendants' goods and services are being offered to consumers with the sponsorship and/or approval of Franklin.

48. The aforementioned acts of Defendants constitute the use of a false designation of origin and/or the making of false or misleading representations of fact in violation of 15 U.S.C. § 1125(a)(1)(A).

49. Unless Defendants are restrained and enjoined from such conduct, Franklin will suffer irreparable injury and harm for which there is no adequate remedy at law.

## **COUNT TWO**

### **Trademark Infringement/Violation of § 32 of the Lanham Act**

50. Franklin repeats and incorporates the allegations of the foregoing paragraphs of this Complaint.

51. Section 32 of the Lanham Act, 15 U.S.C. § 1114(1), provides, in relevant part, as follows:

(1) Any person who shall, without the consent of the registrant—

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action by the registrant for the remedies hereinafter provided.

52. Without the consent of Franklin, Defendants advertised their goods and services in interstate commerce under an unauthorized reproduction of Franklin's federally registered trademark, FRANKLIN.

53. Defendants' actions are likely to cause confusion and mistake among consumers that there is some affiliation, connection, or association between Defendants and Franklin.

54. Defendants' actions are likely to cause confusion and mistake among consumers that Defendants' products and services are being offered to consumers with the sponsorship and/or approval of Franklin.

55. Defendants' actions were willful and intentional and were undertaken in a deliberate effort to cause confusion and mistake among the consuming public as to the source, affiliation, and/or sponsorship of said goods and services, and to gain for defendants the benefit of the goodwill associated with the mark FRANKLIN.

56. The foregoing acts of Defendants constitute a violation of 15 U.S.C. § 1114(1).

57. Defendants' conduct has caused and will continue to cause irreparable injury to Franklin, for which there is no adequate remedy at law.

### **COUNT THREE**

#### **Violation of New Jersey's Fair Trade Act: N.J.S.A. 56:4-1**

58. Franklin repeats and incorporates the allegations of the foregoing paragraphs of this Complaint.

59. N.J.S.A. 56:4-1 provides that "no merchant, firm or corporation shall appropriate for his or their own use a name, brand, trade-mark, reputation or goodwill of any maker in whose product such merchant, firm or corporation deals."

60. The foregoing conduct of Defendants constitutes a violation of N.J.S.A. 56:4-1.

61. Defendants' conduct has caused and will continue to cause irreparable injury to Franklin, for which there is no adequate remedy at law.

### **COUNT FOUR**

#### **Common Law Trademark Infringement and Unfair Competition**

62. Franklin repeats and incorporates the allegations of the foregoing paragraphs of this Complaint.

63. The foregoing conduct of Defendants constitutes trademark infringement and unfair competition in violation of the common law of the state of New Jersey.

64. Defendants' conduct has caused and will continue to cause irreparable injury to Franklin, for which there is no adequate remedy at law.

**DEMAND FOR RELIEF**

**WHEREFORE**, Franklin demands that a judgment be entered against Defendants granting the following relief:

1. Preliminarily and permanently enjoining and restraining Defendants, their subsidiaries, affiliates, divisions, officers, directors, principals, servants, employees, successors and assigns, and all those in active concert or participation with them from:

- (a) imitating, copying, or making unauthorized use of the mark FRANKLIN and/or “franklin.com,” including keyword advertising;
- (b) using any unauthorized colorable imitation of the mark FRANKLIN and/or “franklin.com” in connection with the promotion, advertisement, display, sale, offering for sale, production, import, export, circulation, or distribution of any product or service in such manner as to relate or connect, or tend to relate or connect, such product or service in any way with Franklin;
- (c) engaging in any other activity constituting unfair competition with Franklin, or constituting infringement of the mark FRANKLIN or of Franklin’s rights in, or its right to use or exploit such trademark; and
- (d) directly or indirectly purchasing keyword advertising, consisting of or using the mark FRANKLIN trademark or any other mark that is identical or similar thereto, including “franklin.com.”

2. Awarding actual damages suffered by Franklin and requiring Defendants to account and pay over to Franklin all profits realized by their wrongful acts and directing that such profits be trebled because Defendants’ actions were willful.

3. Awarding permissible statutory damages pursuant to 15 U.S.C. §1117.

4. Awarding Franklin its costs and reasonable attorneys’ fees and expenses, together with prejudgment interest.

5. Awarding Franklin such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all issues so triable.

ARCHER & GREINER  
A Professional Corporation  
Attorneys for Plaintiff,  
Franklin Electronic Publishers, Inc.

By: \_\_\_\_\_

ROBERT T. EGAN, ESQUIRE  
KERRI E. CHEWNING, ESQUIRE

Dated: December 5, 2012

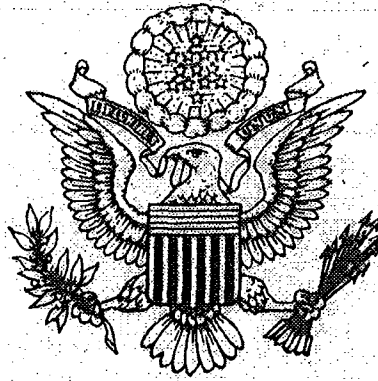
**CERTIFICATION UNDER L. Civ. R. 11.2**

I, ROBERT T. EGAN, ESQUIRE, hereby certify that I am a shareholder in the law firm of Archer & Greiner, P.C., attorneys for the plaintiff, Franklin Electronic Publishers, Inc., and that the matter in controversy in this case is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

\_\_\_\_\_  
ROBERT T. EGAN

DATED: December 5, 2012  
9138788v1

# EXHIBIT A



Nº 1478400

## THE UNITED STATES OF AMERICA

### CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

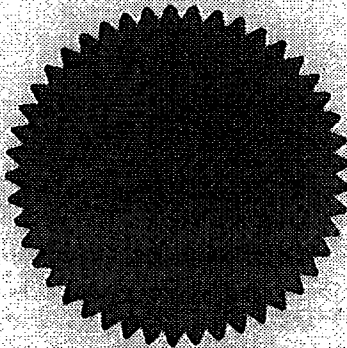
And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

### PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this first day of March, 1988.

A handwritten signature in cursive script, reading "Ronald J. Reiss".

Commissioner of Patents and Trademarks



Int. Cl.: 9

Prior U.S. Cl.: 26

**United States Patent and Trademark Office** **Reg. No. 1,478,400**  
Registered Mar. 1, 1988

**TRADEMARK  
PRINCIPAL REGISTER**

**FRANKLIN**

FRANKLIN COMPUTER CORPORATION  
(PENNSYLVANIA CORPORATION)  
ROUTE 73 AND HADDONFIELD ROAD  
PENNSAUKEN, NJ 08110

FOR: PERSONAL COMPUTERS, DEDICATED PERSONAL COMPUTERS, COMPUTER PERIPHERALS, NAMELY, MONITORS, COLOR COMPOSITE COMPUTER MONITORS, MONOCHROME COMPUTER MONITORS, COLOR

COMPUTER MONITORS, DISK DRIVES, MICE, JOY STICKS AND PRINTER CABLES, IN CLASS 9 (U.S. CL. 26).

FIRST USE 12-0-1983; IN COMMERCE 12-0-1983.

OWNER OF U.S. REG. NO. 1,243,476.

SER. NO. 654,628, FILED 4-13-1987.

G. T. GLYNN, EXAMINING ATTORNEY



# **EXHIBIT B**

franklin - Google Search - Windows Internet Explorer

http://www.google.com/search?q=franklin&sourceid=ie7&rls=com.microsoft:en-us:IE-SearchBox&ie=8&... franklin

File Edit View Favorites Tools Help

Search Images Maps Play YouTube News Gmail Drive Calendar More

franklin - Google... X Ads Preferences Ma...

franklin

Web Images Maps Shopping Books More Search tools

About 444,000,000 results (0.25 seconds)

Ad related to franklin

**Franklin Covey - Official - FranklinCovey.com**  
[www.franklincovey.com/](http://www.franklincovey.com/)  
 Shop FranklinCovey® Products to Help You Succeed - Official Site.  
 Email address Get offers Privacy

New Products Binders & Covers  
 Planners & Refills Bags & Cases

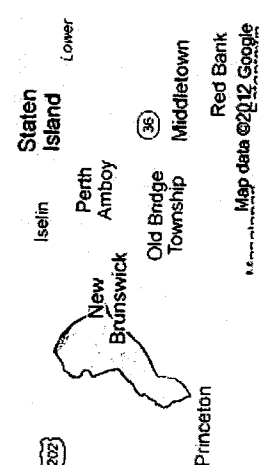
**The Franklin Institute - Home - 215.448.1200**  
[www2.fi.edu/](http://www2.fi.edu/)  
 Take a virtual tour or find out about events, exhibits, and membership.  
 Located in Philadelphia, Pennsylvania.

**Benjamin Franklin - Wikipedia, the free encyclopedia**  
[en.wikipedia.org/wiki/Benjamin\\_Franklin](http://en.wikipedia.org/wiki/Benjamin_Franklin)  
 Benjamin Franklin (January 17, 1706 [O.S. January 6, 1705] – April 17, 1790) was one of the Founding Fathers of the United States. A noted polymath, Franklin ...  
 Autobiography - Lightning rod - William Franklin - Deborah Read

**Franklin Electronic Publishers - Electronic Dictionary, Transla...**  
[www.franklin.com/](http://www.franklin.com/)  
 Franklin Electronic Publishers has built a reputation throughout the world for its commitment to language learning and reference. Fostering relationships with the ...

**Franklin Templeton Investments - Investing, Global, Mutual F...**  
<https://www.franklintempleton.com/>  
 Franklin Templeton is a global investment manager offering specialized expertise across key asset classes and investment styles.  
 Funds - Contact Us - Prices & Performance - 529 College Savings Plans

**Franklin Township, NJ**



Sign in

See results about

Franklin Institute  
 The Franklin Institute is a museum in Philadelphia, Pennsylvania, and one of the oldest centers of ...

Franklin  
 Tennessee  
 Franklin is a city in, and county seat of, Williamson County, Tennessee, United States. It is a southern ...

4:50 PM 12/4/2012

Ads Preferences Manager - Windows Internet Explorer

http://www.google.com/settings/ads/preferences/?hl=en

File Edit View Favorites Tools Help

88 CM/ECF LIVE - U.S. ... 8 Ads Preferences ... X 8 Ads Preferences Ma...

+You Search Images Maps Play YouTube News Gmail Drive Calendar More

franklin.com

Page Safety Tools

# Google

## Ads Preferences

Sign in

### ▼ Ads on Search

Opt out

### Ads on Search when you're signed out

Sign in to your Google Account so we can show you more relevant ads. [Learn more](#)

### ► Ads on the web

Google tries to show you the most relevant ads, whether or not you're opted in to seeing personalized ads. While we often match ads with specific pages (based on the page content or the search terms you enter), additional information helps us to personalize your ads. [Learn more](#)

► Watch a video about ads personalization

### Why these ads?

Find out why we showed you these ads when you searched for "franklin."

► [Franklin Covey - Official - FranklinCovey.com](#) - [www.franklincovey.com/](#)

### Search terms

Matches the exact term you entered: "franklin"

©2012 Google - [Google Home](#) - [Privacy & Terms](#) - [Help](#)

4:48 PM  
12/4/2012



Ads Preferences Manager - Windows Internet Explorer

http://www.google.com/settings/ads/preferences/?hl=en

File Edit View Favorites Tools Help

Google

Sign in

## Ads Preferences

Ads on Search

Opt out

Ads on the web

Ads on Search when you're signed out

Sign in to your Google Account so we can show you more relevant ads. [Learn more](#)

Google tries to show you the most relevant ads, whether or not you're opted in to seeing personalized ads. While we often match ads with specific pages (based on the page content or the search terms you enter), additional information helps us to personalize your ads. [Learn more](#)

▶ Watch a video about ads personalization

Why these ads?

Find out why we showed you these ads when you searched for "franklin.com."

▶ [Franklin Covey - Official - FranklinCovey.com](#) - [www.franklincovey.com/](#)

**Search terms**

Matches the exact term you entered: "franklin.com"

©2012 Google - [Google Home](#) - [Privacy & Terms](#) - [Help](#)

# EXHIBIT C





franklin.com - Google Search

[www.dau-franklin.com/](http://www.dau-franklin.com/)

Session steel guitarist, based in Nashville, who has backed many significant bands and artists. Biography, audio clips, and information on his instruments.

Chip Franklin

**chipfranklin.com/**

Chip is an award winning talk show host, comedian, filmmaker, and musician. Twice awarded the National Edward R. Murrow award for writing and overall ...

Kirk Franklin | The Official Kirk Franklin Website | The Official Kirk...

[www.kirkfranklin.com/](http://www.kirkfranklin.com/)

Official Kirk Franklin website featuring Kirk Franklin news, music, videos, photos, songs, tour dates and more.

## Ben Franklin

**www.benfranklin.com**

**Ben Franklin • See All Departments. Crafts. All Crafts • Yarn • Fabric .... \$3.39**

**Ben's Club Savings • Item Details. Buy It Now! Ben Franklin Top Sellers in Hardware**

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**Pages similar to [www.franklin.com](http://www.franklin.com)**

**Ectaco** - ECTACO Inc. offers electronic pocket multilingual talking ... - [ectaco.com](http://ectaco.com)

**Franklin** - Franklin Electronic Publishers bietet die weltweit ... - [de.franklineurope.com](http://de.franklineurope.com)

Merriam-Webster Online - Free online dictionary, thesaurus, ... - merriam-webster.com

**easytranslators** - Sale prices on electronic dictionaries, ... - [easytranslators.com](http://easytranslators.com)

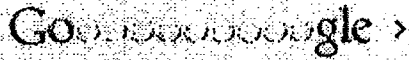
**Ad - Why this ad?**

## Franklin Bible-CBD

[www.christianbook.com/](http://www.christianbook.com/)

christianbook.com is rated  14,348 reviews

Shop for **Franklin Electronics** at [Christlanbook.com](http://Christlanbook.com) & save!



1 2 3 4 5 6 7 8 9 10 **Next**

[Advanced search](#)   [Search Help](#)   [Give us feedback](#)

[Google Home](#)
[Advertising Programs](#)
[Business Solutions](#)  
[New Privacy & Terms](#)
[About Google](#)



# EXHIBIT D

# Franklin®

Electronic Publishers

One Franklin Plaza  
Burlington, NJ 08016-4907  
(609) 386-2500

VIA UPS

June 8, 2012

FranklinCovey Co.  
Attn: Michelle Bettin, Esq., General Counsel  
2200 West Parkway Boulevard  
Salt Lake City, UT 84119-2009

**Re: Unauthorized Use of franklin.com**

Dear Ms. Bettin:

This letter is sent on behalf of Franklin Electronic Publishers, Inc. ("Franklin"), owner of franklin.com, as well as certain trademark rights in FRANKLIN. Attached is a screen shot that appears when one enters "franklin.com" as a search term on the internet. This result evidences your company's unauthorized use of Franklin's property rights. At a minimum, it is apparent that your company uses the keyword "franklin.com" to trigger paid advertising on certain search engines.

This letter is notice that your company's unauthorized use of franklin.com constitutes, among other things, an infringement of Franklin's statutory and common law rights. Without prejudice to our client's rights to damages and other monetary relief, Franklin hereby demands that FranklinCovey cease any and all use of "franklin.com."

Nothing contained herein nor omitted herefrom shall constitute any waiver or admission on behalf of Franklin. Please feel free to contact me at your convenience at (609) 386-2500 ext. 6040.

Very truly yours,



Gregory J. Winsky, Esq.  
Legal Counsel

Cc: Barry J. Lipsky, President & CEO

# EXHIBIT E

**From:** Robert N. Wilkinson [mailto:[rnwlaw@aol.com](mailto:rnwlaw@aol.com)]  
**Sent:** Thursday, June 28, 2012 5:07 PM  
**To:** [greg\\_winsky@franklin.com](mailto:greg_winsky@franklin.com)  
**Cc:** [sarah@fcorgp.com](mailto:sarah@fcorgp.com); [traci.sutton@fcorgp.com](mailto:traci.sutton@fcorgp.com)  
**Subject:** [franklin.com](http://franklin.com)

Greg:

I tried to reach you by phone, and left a voice message for you.

I believe that FC Organizational Products LLC ("FCOP") started bidding on the Internet term [franklin.com](http://franklin.com) when FCOP was first formed in approximately July 2008. It appears that Franklin Covey Co. may have bid on the same term prior to that beginning in approximately June 2006.

I think that our clients' respective products are sufficiently different that there has been no confusion in the marketplace. However, FCOP has stopped bidding on the term in any event.

Let me know if you have any questions.

Sincerely,

Bob  
Robert N. Wilkinson  
ANDERSON CALL & WILKINSON  
136 East South Temple, Suite 2400  
Salt Lake City, Utah 84111  
Telephone: (801) 533-9645  
Fax: (801) 220-0625